

Each one of claims 23-38 expressly recites "[a]n adaptor pod for use in a medical perfusion system...the **adaptor pod comprising....**" Likewise, each of claims 16-22, which remain pending in the present application, expressly recites "[a]n adaptor pod for use in a medical perfusion system...said **adaptor pod comprising....**" In contrast, the aforementioned parent application, now U.S. Patent No. 5,813,972, contains 15 claims, each of which expressly recites "[a] medical perfusion system...comprising...." Given the express language in new claims 23-38, as compared with the language in claims 16-22, and in contrast to the language in the claims of the parent application, it should be readily clear that 1) the applicant was completely justified in adding new claims 23-38 to the present application and 2) the applicant never made a constructive election to prosecute the invention defined by claims 23-38 during the prosecution of the parent application as the examiner now alleges. For at least these reasons, the applicant urges the examiner to reconsider his restriction requirement and reverse his decision to withdraw claims 23-38 from consideration.

On page 3 of the Office Action, the examiner rejects claims 16-22 under 35 USC §103(a) for allegedly being unpatentable over U.S. Patent No. 5,524,213 ("Dais"), U.S. Patent No. 5,820,414 ("Omori") and U.S. Patent No. 5,444,626 ("Schenk"). The applicant traverses this rejection.

As stated above, each of claims 16-22 clearly, expressly and unequivocally defines an adaptor pod for use in a medical perfusion system. Not a single one of the prior patents cited by the examiner has anything to do with medical perfusion systems, or more specifically, adaptor pods, for use in a medical perfusion system, which employ features

that connect the adaptor pod to perfusion devices or control information and/or power to perfusion devices. Dais, for example, describes a method of exchanging and synchronizing data in a network environment. The closest Dais comes to suggesting adaptor pods for use in medical perfusion systems is a statement that the method described therein may be used in "motor vehicles, industrial robots, medical monitoring and analyzing apparatus, elevator systems and the like." No where does Dais expressly or implicitly suggest applicability to medical perfusion systems, or adaptor pods for use in medical perfusion systems, or adaptor pods which connect to, communicate with or control information and/or power to perfusion devices. Omori, on the other hand, describes an integrated circuit (IC) card adaptor for use in "computer devices" such as personal computers. Like Dais, Omori has absolutely nothing to do with adaptor pods for use in medical perfusion systems. Finally, Schenk describes a system which derives control values for a motor vehicle control process. No where in Schenk is there any discussion of, description of, or suggestion of an adaptor pod for use in a medical perfusion system.

It is well understood that in order to establish a prima facie case of obviousness, three basic criteria must be met. One of these criteria is that the reference or combination of references must teach or suggest each and every claim limitation. See MPEP 2143. Since none of the references described above teach, suggest or describe an adaptor pod for use in a medical perfusion system, or an adaptor pod with any of the aforementioned features associated with perfusion devices, the combined teaching of these prior patents cannot possibly be used to establish a prima facie case of obviousness. Consequently, the

applicant requests that the examiner withdraw his rejection of claims 16-22 under 35 USC §103(a).

Recognizing the fact that the combined teaching of these prior patents is deficient, the examiner states that it would have been obvious to one of ordinary skill in the art to modify a communication system, such as the one described in Dais, and employ it in a medical perfusion system. The basis for the examiner's conclusion is that another prior patent, U.S. Patent No. 5,730,720 ("Sites"), involves a medical perfusion system. The applicant respectfully disagrees with this conclusion.

A second one of the three basic criteria which must be met in order to establish a prima facie case of obviousness is that there must be some suggestion or motivation for one of ordinary skill in the art to modify the reference or combined teaching -- hence, the examiner's reliance on Sites. This reliance is without merit, for Sites does nothing more than teach that medical perfusion systems were known, a fact which the applicant does not deny. However, the mere fact that another prior patent involves a medical perfusion system does not amount to motivation for one of ordinary skill to modify the communication system in another patent so that it now somehow includes any one or more of the aforementioned perfusion system and/or perfusion device related features, and after such modification, employ it in a medical perfusion system as suggested by the examiner. In fact, no where does the examiner explain why one of ordinary skill, armed with the knowledge of Sites, would have reason to modify Dais, or for that matter, any of the other prior patents cited by the examiner. To suggest that one of ordinary skill would simply know to do so because it is a matter of choice is, with all respect, a mere conclusion with

no basis in fact. For these additional reasons, the applicant respectfully requests that the examiner withdraw his rejection of claims 16-22 under 35 USC §103(a).

The applicant would also like to point out that the examiner participated in a personal interview on February 25, 2002. At the conclusion of that interview, the examiner agreed that the two primary references Dais and Omori do not disclose the use of an adaptor pod in a medical perfusion system or device. Since the applicant's representative attended this interview to discuss the examiner's previous rejection of claims 16-22 under 35 USC §103 based, in part, on Dais and Omori, the examiner's agreement was understandably taken to mean that the examiner was of the opinion that neither Dais nor Omori rendered claims 16-23 obvious under 35 USC §103(a). Since the examiner does not rely on any additional prior art in his present rejection of claims 16-22, it is unclear to the applicant why the examiner has rejected these claims for reasons that appear to be contrary to his position at the conclusion of the interview.

Finally, on page 5 of the Office Action, the examiner rejects claims 16-22 based on the judicially created doctrine of obviousness-type double patenting in view of claims 1 and 6 of U.S. Patent No. 5,752,931. A judicially created double patenting rejection may be obviated by filing a terminal disclaimer. 37 CFR 1.130(b). Accordingly, the applicant submits herewith a terminal disclaimer pursuant to 37 CFR 1.321 and respectfully requests that the examiner withdraw his rejection of claims 16-22 based on obviousness-type double patenting.

For at least each of the aforementioned reasons, claims 16-22 as well as claims 23-38 are patentable. A notice of allowance is, therefore, earnestly solicited. If the examiner

has any questions regarding this matter, he is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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